IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1283 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUSHILABEN BHAGWANJI - Applicant(s)

Versus

JAMANLAL MEPABHAI PATEL - Opponent(s)

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Appearance :

MR SURESH M SHAH for Petitioner

MR M.R VYAS for Mr. PN BAVISHI for Respondent

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 11/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 29th October, 1991 passed by the learned Joint District Judge, Rajkot in Regular Civil Appeal No. 74 of 1991, the respondent, plaintiff in Rent Case No. 25 of 1990, has preferred the present Revision Application under Section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The petitioner-plaintiff is the successor of one Bhavanji Muljibhai. The said Bhavanji was the owner of the suit premises situated at Rajkot. The said Bhavanji had leased the suit premises to the defendant for a monthly rent of Rs. 450/= inclusive of house tax and 50% of the education cess. The said Bhavanji instituted Civil Suit No. 25 of 1990 in the Court of Small Causes, Rajkot for recovery of possession of the suit premises and the arrears of rent. It was alleged that the defendant was in arrears of rent since 1st May, 1988. He prayed for a decree for the amount of rent due since 1st May, 1988 till 31st January, 1990 and for recovery of possession of the suit premises. The suit was contested by the defendant. The defendant denied that he was in arrears of rent since 1st May, 1988, as alleged. According to the defendant, he had paid the rent upto 30th November, 1988. The defendant also disputed that the agreed rent of the suit premises was Rs. 450/=. According to the defendant, the agreed rent of the suit premises was Rs. 250/= and the defendant had to pay Rs. 200/= for electricity charges. Pending the suit, by Order dated 12th June, 1990 made below Application Exh.9, the learned trial Judge determined Rs. 300/= to be the

interim standard rent of the suit premises. The defendant was directed to deposit a sum of Rs. 7,500/=, the amount of rent due from 1st May, 1988 to 31st May, 1990, *within* one month from the date of the order and to pay interim standard rent of Rs. 300/= regularly every month commencing from 1st June, 1990. The said order dated 12th June, 1990 was confirmed by the learned District Judge, Rajkot in Civil Revision Application No. 23 of 1990. The defendant, however, failed to comply with the said order. By Order dated 20th August, 1991 made by the trial Court below Application Exh. 19, the defendant's right to appear in and defend the suit was ordered to be struck off. Pending the suit, the said Bhavanji passed away on 28th October, 1990. The present petitioner made Application Exh. 21 and claimed that under the Will dated 31st March, 1988 executed by the said Bhavanji the suit property was bequeathed to the petitioner. She, therefore, prayed that she be substituted as heir and legal representative of deceased Bhavanji. The said Application was not objected to by the defendant. By Order dated 12th August, 1991, the present petitioner was substituted as the Plaintiff.

The learned trial Judge, by judgment and order dated 30th August, 1991, allowed the suit and passed a decree for possession and for arrears of rent and for mesne profit in favour of the plaintiff. The learned trial Judge was

pleased to hold that the defendant was the tenant in default; that he was in arrears of rent since 1st May, 1988; and that the agreed rent of Rs. 450/= of the suit premises was the standard rent.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No. 74 of 1991 in the Court of learned District Judge, Rajkot. The learned Joint District Judge, by *impugned* judgment and order dated 29th October, 1991 allowed the Appeal and set-aside the decree for possession and for arrears of rent passed by the trial Court. The lower appellate Court confirmed the findings recorded by the trial Court that the defendant was a tenant in default and that he was not ready and willing to pay the rent. However, the lower appellate court was of the opinion that unless the substituted plaintiff produced a probate or a succession certificate, no decree could be passed in her favour. In support thereof, she relied upon Section 214 of the Indian Succession Act, 1925 and the judgment of the Bombay High Court in the matter of **Bai Dahi v. Ghanashyam Haridas** {*AIR 1956 Bombay 102*}. The said Section 214 of the Act reads as under :-

> **"214. Proof of representative tile a condition precedent to recovery through the Courts of debts from debtors of deceased persons – [1]** No court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming of -

(i) a probate or letter of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913, and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889, or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes."

The amount of rent due to the deceased plaintiff was the debt due to the deceased plaintiff. No decree, therefore, could be passed in favour of the substituted plaintiff for the debt due to the deceased plaintiff unless the succession certificate/ probate or letter of administration were produced.

In the matter before the Bombay High Court, the landlord had instituted two suits against the tenant – one for recovery of possession of the suit premises and another for recovery of the amount of rent due. Pending the proceedings, the landlord died. A decree for possession and arrears of rent came to be passed in favour of the successor of the plaintiff. In Revision Application before the Bombay High Court, a contention was raised that the arrears of rent included the claim for rent which fell due during the life time of the landlord. The rent which fell due during the life time of the landlord became debt due to the deceased landlord. Unless the successor produced a succession certificate, no decree could pass with respect to such debt. In support thereof, reliance was placed on Section 214 of the Indian Succession Act, 1925. The Bombay High Court held that, "..**the rent which accrued due during the life-time of the landlord must be regarded as 'debt' within the meaning of Section 214 of the Indian Succession Act, 1925. ...The learned District Judge was therefore in error in passing a decree in favour of the plaintiff without production of either a succession certificate or probate, or letters of administration, or a certificate under S.31 or S.32, Administrator General's Act, 1913 in respect of the arrears of rent which fell due during the lifetime of Bai**

Mani.”

In the present case, the suit had been instituted by the deceased landlord for a composite decree of recovery of possession as well as for amount of rent due. In my view, the lower appellate court has clearly erred in applying the aforesaid judgment of the Bombay High Court to the decree for possession and arrears of rent passed in favour of the plaintiff and in setting aside the decree for possession as well as for *mesne* profits.

As recorded hereinabove, both the Courts below found that the defendant was in arrears of rent since 1st May, 1988. He did not pay the rent in answer to the notice of demand given under Section 12 (2) of the Rent Act. Inspite of the aforesaid order dated 12th June, 1990 made below Application Exh. 9, the defendant did not deposit the *interim* standard rent pending the suit. The defendant did not pay the amount of rent due after the decree was passed by the trial Court nor did he deposit the rent pending the Appeal. Thus, the defendant was clearly a tenant in default and was not ready and willing to pay the rent. A decree for eviction, therefore, was inevitable. The claim for possession cannot be said to be a ‘**debt**’ within the meaning of the aforesaid Section 214 of the Indian Succession Act, 1925 and the decree for possession could

not have been set-aside as has been done by the lower appellate Court. At best, the lower appellate Court could have *set-aside* the decree for the amount of rent due during the lifetime of the deceased plaintiff i.e upto 28th October, 1990 or else could have remanded the matter to the trial Court for modification of the decree for arrears of rent passed by it.

In view of the above discussion, the *impugned* judgment and order dated 29th October, 1991 of the learned Joint District Judge, Rajkot passed in Civil Appeal No. 74 of 1991 is *quashed* and set-aside. The decree for possession dated 30th August, 1991 passed by the learned Judge, Small Causes Court, Rajkot in Rent Case No. 25 of 1990 is confirmed. As to the decree for recovery of the amount of rent due and *mesne* profits, learned advocate Mr. Shah states that the plaintiff shall not press for the decree for recovery of amount of rent due during the lifetime of the deceased-plaintiff Bhavanji Muljibhai. In view of the aforesaid concession made by Mr. Shah, the decree passed by the trial Court for recovery of the amount of rent due is *quashed* and set-aside. The decree for *mesne* profits passed by the trial Court is modified to the effect that the plaintiff shall be entitled to recover *mesne* profits as directed by the trial Court for the period from 29th October,1990 till the date of recovery of

possession of the suit premises.

Revision Application is allowed to the aforesaid extent with cost. Rule is made absolute accordingly.

{Miss R.M Doshit, J.}

*Prakash**